

LAKE COUNTY PLANNING BOARD
March 13, 2019
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, Sigurd Jensen, Rick Cothorn, Lee Perrin, Janet Camel, Abigail Feiler, Brendeon Schoening, David Passieri (via phone)

STAFF PRESENT: Jacob Feistner, Clint Evenson, Lita Fonda; Wally Congdon

Steve Rosso called the meeting to order at 7:00 pm. He welcomed new member David Passieri, who was participating via phone.

SELECT 2019 CHAIR AND VICE-CHAIR (7:00 pm)

Motion made by Janet Camel, and seconded by Rick Cothorn, to appoint Steve Rosso as chair. No other nominations for chair were offered.

Motion made by Sigurd Jensen, and seconded by Lee Perrin, to appoint Rick Cothorn as vice-chair. No other nominations for chair were offered.

Motions for the nominated slate carried, all in favor.

TOSTE SUBSEQUENT MINOR OF SP-124 TRACT B (7:02 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the March 2019 meeting file for staff report.) Earl Hanneman of Carstens was present to represent the Tostes.

Clint responded to Lee regarding the 1-foot no access easement to Hwy 93. No accesses or approaches were allowed on the boundary along the whole lot line for SP-124. It needed approval from MDT (Montana Dept. of Transportation) and the Lake County Commissioners to be removed. With the document provided by Carstens and approval of MDT, Planning staff felt the configuration of the lot was reasonable for how the applicants wanted to access the property. Lee thought an access already existed from the property to the highway. Jacob explained when SP-124 was done, the two proposed accesses for residential properties were both required to be to W Post Creek Road and the no-access easement was put in. Perhaps the applicant could speak to where the existing access came from. The 1-foot no access easement was specific to the subdivision, not something that ran along the entire highway. Jacob gave more detail on the history and the request for removal of the easement. MDT had already given an approach permit for the requested access that resulted from the proposed lot reconfiguration.

Janet commented that with the work on the Hwy 93 project, they found a third of the accidents on Hwy 93 were related to the number of access points. They worked with the Highway Dept. to reduce the number of access points by half on the corridor from Evaro to Polson. The recommendations in the record of decision for this highway project were to not add new access points to Highway 93 because of safety. If someone could access from a County road, they were supposed to use that in an effort to add approaches to the highway only when no other options were available. There might have been an old farm field approach. She recommended that they

look at possibly taking the approach onto W Post Creek Road. The Tribes were supposed to be involved in approving new accesses onto Hwy 93, which was a condition of the signing of the Memorandum of Agreement with the Highway Dept. and with FHWA (Federal Highway Administration). Rick asked if something indicated that the Highway Dept. contacted the Tribes. Clint had no way of telling.

Abigail noted the stretch of highway between Ronan and Mission was bad terrain. To add another driveway there was a terrible idea. Janet highlighted the section on the hill as particularly bad. They planned to add a truck-climbing lane on the northbound side, so that right-of-way would be expanding.

Clint mentioned he was just given the approved approach permit. Jacob added that the comment they were given referenced a turn lane for that intersection. Steve thought sometimes compromises happened, such as lining up one driveway with the one across rather than having them offset so there was only one intersection point. Location was discussed. [Jerry Reffner, the father of Sean Reffner who had 40 acres on the west side of the subdivision] mentioned that on the east side, the fencing wasn't on the property line. Julie Reffner, [Sean's mom], said no easement was given to Jim Toste when they sold the property last summer.

Referring to #5 on pg. 4 and MTD's issued approach permit, Steve thought [Glen] Cameron was suggesting an easement be put on there so lot B2 could drive across lot B1 during the construction period, although it didn't say that specifically. It did reference construction. Janet said the approach permit was granted with conditions. Rick noted the State had already granted the access.

In #3 on pg. 4, Clint clarified that the waiver of the right to protest future Road Improvement Districts (RID's) applied to the southern lot. For #5 on pg. 7, Jacob said the applicants demonstrated an adequate water source on each lot by analyzing other wells surrounding the property. Clint showed the location of Ashley Creek on attachment #3. Steve observed the lower right corner was 30 feet lower than the upper left corner. Jacob remarked that the creek traveled from east to west, running from the mountains. Clint identified the feature along Hwy 93 as a ditch. Sigurd confirmed that a driveway crossing the ditch wouldn't require a 310 permit, unlike crossing Ashley Creek, which was perennial. Earl Hanneman noted they hadn't heard back from the emergency medical service provider in the area. Janet referred back to crossing water bodies since on the reservation, this required an ALCO (Aquatic Lands Conservation Ordinance) permit from the Tribes. The ditch would not require this. They would have to check with the ALCO staff regarding whether a permit would be required to cross Ashley Creek.

David was familiar with the property. A double gate access about 30 feet wide existed on the property from Hwy 93, in the middle of the property or slightly north, with [the access] running from Hwy 93 to the property that was no longer in Jim Toste's name. This road was historically used for farm equipment access to the subject parcel plus to the interior 40-acre [parcel] that had access to Fish Hatchery [Road]. He thought that historical access might be part of the reason MDT issued a permit. The ditch that ran diagonally from the west boundary downward to the SE was in a fairly significant wetland type of area. It seemed more detrimental to build a roadway

through that. Although possible, it seemed quite expensive. He wondered if there would be two lanes on each side of the highway here.

Janet said would be two lanes on the north side with the turning lane at Post Creek. She agreed with his concern about crossing the creek, and that the less disturbance, the better. When a change in use happened with a farm field approach, the Tribes were supposed to be consulted when it was going to change to residential. Her main concern was that the Tribes were kept in the loop. The access issue and the safety issue were good for people to be aware of. A compromise might need to be made here because of the wetland and the Ashley Creek issue.

Jacob followed up with the first condition on the approach permit, which said they must coordinate with the Confederated Salish & Kootenai Tribes for any Tribal requirements or restrictions, as they would be working within the Flathead Indian Reservation. This wasn't included in the attachments. Janet was appreciative. Jacob noted it was a condition of the State so it wasn't included as a condition of the County. They could add it if the Board wanted it.

Lee turned to pg. 10 and the absence of comment from the Flathead Indian Irrigation Project (FIIP). It seemed like the property was already being used for irrigation and a main line was along the west boundary. Jerry said a pump house was already there. The waterline ran along the western side of that subdivision. Lee wondered if the mainline and wheel lines were proposed to stay and to continue to irrigate.

Concerning the water, agent Earl Hanneman said they were waiting for FIIP to say what water should go where. Then they would propose that in the subdivision application. Concerning the highway, the application was approved a while back. Recently he received via Planning the comment from MDT about the left-hand turn lane. He got the approval from Jim Toste this afternoon for a proposal. They proposed keeping the MDT approach but at some point when MDT made changes in that area and that approach became no longer viable and they wished to make it go away, an easement would go along the west side near the main line that would not be developed until that point. At that time, whoever owned the lot would need to bring in their driveway and pay for moving the main line over to make it so everyone could get irrigation. The main line couldn't cross the road or visa versa. He didn't have the plan exact yet but that was the proposal. They wanted to reserve an easement on B1 to go to B2, which would only be developed when the other approach went away. At that time, they'd have to check with the Tribes and for floodplain or water. With MDT, you didn't know how long it would take for them to develop the area. They'd like another access from W Post Creek Road in the future if it was necessary. He confirmed David's information on the farm access. It was reserved for an equipment company that was on the back side. The access had been well-maintained and well-built although it had grown up.

Steve asked if the easement meant the condition about the RID should be applied to both lots, since both would have access. Clint said that would be the case. Earl described that the easement would go along the property line outside of the main line. Jerry concluded the road would be east of the main line.

Public comment opened:

Jerry Reffner introduced himself and his wife Julie, who were representing their son Sean, who bought the property to the west. He and Julie confirmed this property was on the corner of Fish Hatchery Road and Post Creek Road, that the property north of Sean's had the old tractor supply company (which was still there) and that Ashley Creek did indeed run east to west. It went under Fish Hatchery Rd and was year-round.

Julie thought the fencing location was about 6 feet off the property line. Jerry said that was where the water line went. You didn't want vehicles and construction driving over that. Julie said they wanted to be sure the property was being surveyed with proper markers so it wouldn't interfere with Sean's property. Jacob suggested that they condition that it should comply with state law. If it didn't, the state should make it comply. Steve said if they were going to put an easement along that property line for a driveway, they didn't want the driveway to get built in the wrong place because they thought the line was where the fence was. Earl said survey markers would be there so when someone bought the property, they would know where those were at.

Julie confirmed that Sean's property was also irrigated from this main line. Jerry asked where the northbound truck lane that Janet mentioned would start. For Post Creek, when you pulled out to go north, it was downhill to the lumber company. When you were trying to get on Hwy 93, you couldn't see people coming up over the hill. They didn't slow down. Julie said the same thing for coming down over the hill. They'd be turning right onto the property. You put the blinker on well ahead of time so people could see you were turning. Jerry said they still passed you. Janet agreed it was very dangerous. They were supposed to work on the sight distance issue there too. She worked on this project for 20 years, then was moved to the Tribes' economic development office so she hadn't seen the specific plans. She suggested the Reffners speak with the Road Program manager, Gabe Johnson. He was working with the Highway Dept. and would probably have a set of plans. He was located in Ronan at the Tribal Safety of Dams office. One problem was people were trying to pass on the hill. The truck climbing lane had been proposed for the last 25 years. It ran into problems when they were expanding the bridge over Post Creek. She thought that would be only two lanes with wide shoulders; the truck climbing lane must be after that. They ran into an artesian well when they were drilling for the abutments. They had to put a lot of work into that area. It would take a long time while they got that figured out. It would be 3 lanes. Then there'd be the left turn bay. Rick thought they were going in the right direction.

On pg. 15, on IV.2 on the 4th line, Steve added an 's' to 'buffer'. Clint thought the corrections for the setbacks on the plat were conditioned. Jacob didn't think they needed to say something about that in the findings. Clint said that conditions #5 and #6 addressed that. On pg. 16, in VII, Steve asked if they needed to include approvals or permits that were required from CS&KT or possibly DNRC to cross Ashley Creek. Jacob suggested this would be the Tribes and the Conservation District for the 310 permit. Steve suggested doing the same thing for #6 on pg. 17, by adding 'if the proper permits are obtained from the County, the State, CS&KT and the Conservation District' to the last sentence. On pg. 16 in 4.d, he added 'and the Density Map & Text' in the second line after 'Subdivision Act'. Jacob suggested in that case they add 'and policies' after 'other regulations' in the heading to #4.

Steve asked about conditions that appeared under preliminary approval versus those appearing under perpetual conditions. Some conditions such as setbacks appeared in both places, such as #5 and #6 compared to #30. Clint recalled they were requiring a buffer plan with corrected structural setback numbers. They could probably add the setback for the structures as well, which would be perpetual, but they needed a new amended buffer plan prior to filing. Jacob explained that #5 and #6 required it to be shown on the plat, which was why it was a condition of approval. Once it was on the plat, [it was covered] and didn't need to be required as a perpetual condition. Setbacks from [benches], laterals and waterlines were shown on the irrigation plan but not necessarily on the plat. By putting it in #30, they made sure that it was seen.

Janet asked if the plat referred to the irrigation plan. Jacob said there would be language on the plat. It also was filed in the J-file with the subdivision documents but they wouldn't be together. If someone read the plat, they would know to look for it.

On pg. 20, perpetual condition #28 talked about road approaches again and referenced the changed findings so Steve suggested adding CS&KT and the Conservation District approvals to #28 as well. On pg. 21 in condition #33, he suggested that they reference the Right to Farm policy. Jacob agreed. Janet checked on the wording of the change for condition #28 on pg. 20. Jacob said the last sentence referenced conditions of the permits, which would include approvals necessary from CS&KT as well as the County Conservation District. He thought that would do it.

Jacob asked if the Board wanted to add a condition referencing the easement that Earl spoke about on the western property line. Janet thought they probably should, given concern with the irrigation pipe and the access. It was buried main line. You weren't supposed to drive over it but you wanted to be able to irrigate on the other side. Earl said near where the lots came together, they would have to put an extension at that point [and] on the other side of the driveway. You couldn't irrigate across the road either. That was the reason MDT would keep [the access] until the time at which it wasn't viable anymore and MDT said it needed to go away. This easement would go into effect then and they would have to put in that extension of the main line. Janet asked if they could get a drawing or written explanation. Earl replied they would put that on the plat. Jacob said that should be a condition of approval. Steve summarized it would say there would be an easement approved on the plat, with consultation of the County and approval from CS&KT and FIIP.

Julie asked if an extension would be needed for both lots. Earl said the road wouldn't go into the northern lot. The first lot needed the easement to get to the second lot. Steve checked that the line ran along the property line, and the driveway would be on the east side of the water line. Lot B1 would have to run a pipe that connected to that line under the easement so it came out on the east side of the easement. Earl said given B1's northern lot line and B2's southern lot line, a junction would have to come off the main line and cross through a culvert so that way you weren't running over a main line. Then they could access from there how they wished. Janet noted that would need [inaudible permit]. Jerry thought the pump house was on B2 and mentioned it would [need to] be written so Sean still had [access] to get through there to get to the pump house.

Jacob wanted to make sure that if they had to go that route, B1 was willing to give up that easement for the irrigation and that there would be a new easement for the new irrigation line as well as the road. It needed to be clear so there were no arguments if and when this happened. Steve referred to the dotted line on attachment 3. It appeared to be 20 feet wide. Jacob said it should be an access and maintenance easement for that buried line. Steve saw that it said irrigation main pipe line. Janet noted it said access and utility easement per the legend. Earl said the pipeline was right on the boundary line. Given a utility easement along the west side of the two lots, Steve asked if the driveway easement could be part of that. Earl thought it was possible. Jacob suggested they draw a 60-foot access and utility easement along the western property line and they could write in that it could be used for irrigation line, power line or whatever. The 60 feet would start at the actual property line, once that was determined. Jacob said the utilities were conditioned to be underground.

Motion made by Steve Rosso and seconded by Rick Cothorn, to recommend approval based on revised findings of fact and conditions as modified. Motion carried, 7 in favor (Steve Rosso, Sigurd Jensen, Rick Cothorn, Lee Perrin, Janet Camel, Abigail Feiler, Brendeon Schoening) and one abstention (David Passieri).

UPCOMING PLANNING BOARD PROJECTS (8:14 pm)

Jacob Feistner discussed the staff memo and upcoming Planning priorities, to reintroduce these ideas. (See attachments to minutes in the March 2019 meeting file for staff memo.) He gave some background and asked for Board comments.

Lee asked if outside input was needed for the top priorities or if they could do this as a board. Jacob said they'd have to go through public review, with noticing and posting in these areas, and request public comment. He gave the example of Lake Mary Ronan zoning, which in addition to map issues, hadn't been revised since it was written in 1997. He listed some fixes and minor corrections that would be beneficial. They were aiming to do Lake Mary Ronan and Swan Sites zoning at the same time.

Rick asked if the [Board of Adjustment] meeting would conflict with a 6:30 pm start time. Steve said it depended on how many items the earlier board had. Other board members murmured that an earlier start would work for them. Jacob noted that the Board of Adjustment meeting start time had been moved up to 3:30 pm from 4 pm. Rick said the 6:30 pm start time could be a goal, especially if they had more work to do.

Jacob said they might try to work in the floodplain regulations at the same time. The changes were minimal and required by the State. Steve mentioned there might be public concern. The pervious area had been reduced by development which pushed the edge of the floodplain out, bringing other properties into the floodplain and also bringing in concerns from these owners newly in the floodplain.

Regarding Lake Mary Ronan, Steve recalled discrepancies between the map and text. Would the zoning dimensions expand to include everything around that lake? Jacob said his goal was to make the map match the description. Steve thought they could look at that and make sure it would function into the future if there were properties excluded. He recalled issues with people

wanting to create regulations for the zoning district who were not included in it. Jacob noted most of the discrepancies were on the east side or in the state park. He planned to include details of each discrepancy next month.

Sigurd explained that Plum Creek zoned themselves [at Lake Mary Ronan] and then sold lots. Other areas didn't want to be part of Plum Creek's zoning. Lacking agreement, Plum Creek just did the zoning with their lands. Steve suggested some of the owners outside the zoning district might now want to be in it. Jacob mentioned one property on the lakeshore that the zoning circumvented. It looked like a mistake but it was right. Steve saw it as an opportunity to talk to property owners and straighten out those things and to allow the people who wanted to be in the district to join.

Steve touched on the lakeshore protection regulations. He thought they could make it simpler than the last draft. Recently the lakeshore regulations had been amended. He'd noticed recently that Flathead County had something in their lakeshore protection regulations that was similar to Lake County zoning districts in that they talked about vegetative buffers and not allowing fertilizers, insecticides and so forth. They could consider adding something to the Lake County lakeshore regulations that would include this for the non-zoned areas. Also they could put limits on buoy placement within riparian boundary lines. He wondered if considering those points as amendments would be reasonable in the next months. Jacob said it was more manageable to do those as amendments than to do the rewrite he'd pictured. The planners dealt with a handful of items where they often issued variances because the items seemed reasonable but didn't comply with the current regulations. They might deal with those.

Jacob noted he didn't need something from the Board tonight. The point was for discussion for people to be on the same page.

Steve identified an objective of getting the zoning district regulations to match better. For example, setbacks from county roads seemed to vary. A quick review of the other zoning districts to see what the differences were and then picking something would help so when they looked at these first two zoning districts, they could use that. Jacob said the far-sighted goal was to have one document (instead of 15) that shared definitions, administrative processes and so forth, except for the unique portions for an area. The administrative language would be the same. He planned to propose vacation rental language that could be used in every zoning district.

MINUTES (8:37 pm)

Janet and Abby were not at the two meetings whose minutes were under consideration and would abstain. Both chose to leave at this point. David Passieri was also gone at this point.

March 8, 2017:

Motion by Rick Cothorn, and seconded by Lee Perrin, to approve the March 8, 2017 meeting minutes as presented. Motion carried, 4 in favor (Steve Rosso, Sigurd Jensen, Rick Cothorn, Lee Perrin) and one abstention (Brendeon Schoening).

November 14, 2018:

Motion by Lee Perrin, and seconded by Brendeon Schoening, to approve the November 14, 2018 meeting minutes as presented. Motion carried, 3 in favor (Lee Perrin, Brendeon Schoening, Steve Rosso), and two abstentions (Rick Cothorn, Sigurd Jensen).

OTHER BUSINESS

None.

Steve Rosso, chair, adjourned the meeting at 8:42 pm.